

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**Harold Ledbetter as Administrator of the §
Estate of Annie P. Thrash, §
 §
 §
Plaintiff, §
 §
 §
 §
v. §
 §
 §
Blair Corporation et al., §
 §
 §
 §
Defendants. §**

No. 3:09-cv-843-WKW

MOTION TO COMPEL COMPLIANCE WITH SUBPOENA

COMES NOW Defendant Blair Corporation and moves the Court for an Order compelling Kroger Pharmacy to comply with the subpoena served upon it on July 16, 2010. A copy of the subpoena and the certified mail receipt indicating service of the subpoena is attached hereto as Exhibit A. As grounds for this motion, movant shows the Court as follows:

1. The undersigned issued the subpoena, (Exhibit A), on July 15, 2010. As indicated by the certified mail receipt, the subpoena was served on Kroger Pharmacy on July 16, 2010.
2. Plaintiff filed a Motion for Protective Order on July 20, 2010, which was denied by the Order dated August 6, 2010.
3. A representative of Kroger Pharmacy has agreed to respond to the subpoena if it is limited to the production of three years of pharmacy records for Annie Price Thrash. Kroger Pharmacy's policy is to produce only three years of records. If records are requested beyond three years then an archival search fee is charged by Kroger Pharmacy.

4. Kroger Pharmacy requires a Court Order in addition to a subpoena before it will comply with the subpoena.

5. Blair Corporation is willing to limit the subpoena to a three year time frame as requested by Kroger Pharmacy but reserves the right, depending on the documents produced and the results of additional discovery, to issue an additional subpoena to Kroger Pharmacy in the future if it deems necessary.

6. Counsel for plaintiff consents to this Motion to Compel on the condition that the subpoena is limited to the three year time span requested by Kroger Pharmacy.

Accordingly, Blair Corporation requests the Court to grant this Motion to Compel and order Kroger Pharmacy to produce pharmaceutical records as described in the subpoena pertaining to Annie Price Thrash, for the three years preceding the issuance of the subpoena.

Respectfully submitted,

/s/ Stephen A. Rowe

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Counsel for Defendant Blair LLC

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of Court using the Electronic Filing System, which will send notification of such filing to the following, on this the 10th of August, 2010:

COUNSEL FOR PLAINTIFF

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s/ Stephen A. Rowe

Of Counsel

EXHIBIT A

United States District Court

FOR THE MIDDLE DISTRICT OF ALABAMA

EASTERN DIVISION

Harold A. Ledbetter, as Administrator, etc.

v.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: CV-09-843

Blair Corporation, a foreign corporation, et al.

TO: Kroger Pharmacy
2460 Enterprise Drive
Opelika Alabama 36801

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See attached Schedule "A"**

PLACE	DATE AND TIME
Adams and Reese LLP 2100 Third Avenue North, Suite 1100 Birmingham, Alabama 35203	August 2, 2010

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below:

PREMISES	DATE

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR DEFENDANT BLAIR)	DATE
x <i>Stephen A. Rowe</i>	July 15, 2010

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	Stephen A. Rowe, Esq. Adams and Reese LLP 2100 Third Avenue North, Suite 1100 Birmingham, Alabama 35203	(205) 250-5000
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SCHEDULE "A"

To produce and permit this defendant to inspect and to copy the following:

Any and all pharmaceutical records, including but not limited to: correspondence, notes, memoranda, reports, bills, invoices, statements, prescription sheets, prescribed medications, prescribing physicians, writings, etc., at any time whatsoever pertaining to: **Annie Price Thrash** (**Date of Birth:** [REDACTED] ; **Date of Death:** 10/30/08).

HIPAA COMPLIANCE LANGUAGE

In compliance with 145 CFR 164.512(e)(1)(ii),(iii), the undersigned states as follows:

(1) The defendant has given or attempted to give the individual whose records we are seeking notice of this subpoena. The notice of intent of the subpoena was issued at least fifteen (15) days prior to the issuance of the subpoena. The attorney for the patient has received this notice.

(2) The notice of the intent to issue the subpoena as well as the subpoena, are sufficiently specific about the records sought. This notice provides sufficient information about the litigation to allow the attorney for the patient to raise an objection before the court.

(3) That the attorney for the patient has fifteen (15) days from the issuance of the Notice of Intent to issue the subpoena to file or raise any objections to same, and that time has passed with no objections being raised or if any objections have been raised, they have been resolved by the court.

Such production, inspection and copying is to take place at the offices of Stephen A. Rowe, ADAMS AND REESE, LLP, 2100 Third Avenue North, Suite 1100, Birmingham, Alabama 35203, or at such other place as may be mutually agreed upon between the parties hereto.

You are further advised that other parties to the action in which this subpoena has been issued have the right to be present at the time of such production or inspection. This defendant agrees to pay all reasonable expenses incurred at the time of inspection.

You have the option to deliver or mail legible copies of documents or things to counsel for the party causing the issuance of this subpoena, but you may condition such activity on your part upon the payment in advance by the party causing the issuance of this subpoena of the reasonable costs of the making of such copies.

The "Certificate" attached hereto should be executed by the custodian of the records produced. After the custodian's signature has been notarized, the Certificate should be attached to the top of the documents produced.

CERTIFICATE

I hereby certify that the attached documents are true and complete copies of all records maintained by **Kroger Pharmacy**, pertaining to **Annie Price Thrash**, which records are kept under my supervision as the legal custodian of said records. I further certify that said records were made in the regular course of business and that said records were made at the time of the acts, events, transactions, or occurrences to which they refer or within a reasonable time thereafter.

Executed this _____ day of _____, 2010.

Custodian of Records

Sworn to and subscribed
before me this ____ day
of _____, 2010.

Notary Public

My Commission Expires: _____

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <i>Jane Brown</i></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____</p> <p>C. Date of Delivery 7/16</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to: Kroger Pharmacy ATTN: Custodian of Records 2460 Enterprise Drive Opelika, AL 36801 </p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>7005 1160 0001 1514 5360</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540